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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY JOHN KAHN,

Defendant and Appellant.

C059836

(Super. Ct. No.  
08F1580)

A jury convicted defendant Jeffrey John Kahn of corporal injury on a spouse with a similar prior conviction (count 1) and false imprisonment by violence (count 2). Prior to trial, defendant admitted the prior conviction alleged in count 1. Citing several factors in aggravation, including defendant's numerous prior convictions (nine misdemeanors), the court sentenced him to the upper term of four years on count 1 and to three years on count 2, but stayed the latter sentence pursuant to Penal Code section 654. The court also imposed \$800 in restitution fines in accordance with Penal Code sections 1202.4, subdivision (b), and 1202.45.

## FACTS

Rebecca Rodriguez testified that on February 16, 2008, she was in her apartment awaiting the arrival of defendant, who was the father of their child, so that the three of them could attend a neighbor child's birthday party. After waiting 45 minutes, Rodriguez went to the party without defendant.

When Rodriguez returned home she found defendant on the couch, having just been awakened by her closing the apartment door. Defendant appeared to have been drinking and was slurring his speech, but his condition could have been caused by the medication he was taking for his bipolar affliction. They argued and she asked him to leave. He appeared angry and came toward her, so she grabbed the telephone. He knocked the phone from her hand and they fought, during which time he kicked her legs out from under her, climbed on top of her, told her, "Do you remember O.J.?" and pushed an empty beer can into her mouth. Eventually, he asked her whether she had had enough and she said "yes." When he went into a bedroom, she fled the residence with the child to seek help.

Kelly Parks, a neighbor of Rodriguez, saw Rodriguez, who was hysterical. She had "slits on her mouth, as well as on her eyes" and she was bleeding. Rodriguez asked for help and Parks took her to Parks' apartment while another neighbor called 911.

Defendant testified that at the time of the assault on Rodriguez he was taking several medications. He remembered being awakened by Rodriguez, explaining to her that he did not

feel well. He then blacked out and does not remember the attack.

#### DISCUSSION

Defendant appealed and we appointed counsel to represent him. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

#### DISPOSITION

The judgment is affirmed.

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NICHOLSON, Acting P. J.

We concur:

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RAYE, J.

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BUTZ, J.